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UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE

Service and Regulatory Announcements No. 155

**RULES AND REGULATIONS** *22* 1940

(As Amended)

of the Secretary of Agriculture

GOVERNING THE

**GRADING AND CERTIFICATION OF**

**CANNED FRUITS AND**

**VEGETABLES**

Under an Act of Congress Approved June 30, 1939  
(Public, No. 159, 76th Congress)

Issued November 1939





## United States Department of Agriculture

## AGRICULTURAL MARKETING SERVICE

## SERVICE AND REGULATORY ANNOUNCEMENTS NO. 155

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**RULES AND REGULATIONS (AS AMENDED) OF THE SECRETARY OF AGRICULTURE GOVERNING THE GRADING AND CERTIFICATION OF CANNED FRUITS AND VEGETABLES**


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UNITED STATES DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SECRETARY,  
*Washington, D. C.*

By virtue of the authority vested in the Secretary of Agriculture by the act of Congress approved June 30, 1939 (Public, No. 159, 76th Cong.) entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1940, and for other purposes" authorizing the establishment of an inspection service for farm products, I, Harry L. Brown, Acting Secretary of Agriculture, do make, prescribe, publish, and give public notice of the following regulations superseding the regulations of the Secretary of Agriculture approved March 23, 1932, as amended, governing the grading and certification of canned fruits and vegetables, such regulations to be effective immediately.

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(Title 7, Ch. I, Pt. 52 of the Code of Federal Regulations)

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## DEFINITIONS

**52.1 Meaning of words.**—Words used in these regulations in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

**52.2 Terms defined.**—For the purpose of these regulations, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) *The act.*—The following provision of an act of Congress entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1940, and for other purposes," approved June 30, 1939, "For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of businessmen or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality, and condition of cotton, tobacco, fruits, and vegetables, whether raw, dried, or canned, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States as *prima facie* evidence of the truth of the statements therein contained."

(b) *Secretary.*—The Secretary or Acting Secretary of Agriculture of the United States.

(c) *Agricultural Marketing Service.*—The Agricultural Marketing Service of the United States Department of Agriculture.

(d) *Canned fruits and vegetables.*—Any fruits or vegetables preserved in hermetically sealed containers and sterilized by heat.

(e) *Official grader.*—An employee of the United States Department of Agriculture authorized by the Secretary to investigate and certify to any financially interested party the quality and condition of canned fruits and vegetables under the act.

(f) *Licensed sampler.*—A person, not an employee of the United States Department of Agriculture, authorized by the Secretary to officially draw samples of canned fruits and vegetables under the act and these regulations.

(g) *Person.*—An individual, corporation, partnership, or two or more persons having a joint or common interest.

(h) *Certificate of grade.*—A certificate issued under the act, stating the grade, quality, and condition of canned fruits and vegetables.

(i) *Certificate of sampling.*—A certificate issued under the act by a licensed sampler covering samples officially drawn from a specifically designated lot of canned fruits and vegetables.

(j) *Lot.*—A lot may consist of any number of containers of one size, of one commodity, of one type and one style and, in the case of products customarily packed to size, one size.

(k) *Case.*—For the purpose of these regulations, whether the canned fruits and vegetables be cased or uncased, a case shall be construed to consist of the usual numbers of cans ordinarily packed in a case. For example, 48 No. 1 eastern or picnic size cans, 24 No. 2, No. 2½, or No. 3 size cans, 12 No. 5 size cans, or 6 No. 10 size cans shall constitute a case.

(l) *Regulations.*—Rules and regulations of the Secretary, under the act relating to canned fruits and vegetables.

## ADMINISTRATION

52.3 Chief of Agricultural Marketing Service.—The Chief of Agricultural Marketing Service is charged with the supervision of the performance of all duties arising in the administration of the act.

## WHERE SERVICE IS OFFERED

52.4 Official sampling and grading.—Samples may be drawn by employees of the Department designated for the purpose at the following points and such other points as may be conveniently reached therefrom. Official grading will be performed at points designated with asterisk (\*) and such other points as may be designated from time to time. Samples will be drawn by officials stationed at any of the points listed. Samples drawn at points where grading service is not available will be forwarded at expense of applicant to nearest grading office.

(a) *List of offices.*—Albany, N. Y., Atlanta, Ga., Baltimore, Md., \*Boston, Mass., Buffalo, N. Y., \*Chicago, Ill., Cincinnati, Ohio, \*Cleveland, Ohio, \*Columbus, Ohio, Denver, Colo., Detroit, Mich., \*Easton, Md. (seasonal), East Providence, R. I., Fargo, N. Dak., Fort Worth, Tex., Harrisburg, Pa., Hartford, Conn., Houston, Tex., \*Indianapolis, Ind., \*Jacksonville, Fla., Kansas City, Mo., Los Angeles, Calif., Memphis, Tenn., Milwaukee, Wis., Minneapolis, Minn., \*Newark, N. J., New Haven, Conn., New Orleans, La., \*New York, N. Y., Norfolk, Va., \*Oklahoma City, Okla., Omaha, Nebr., \*Philadelphia, Pa., Phoenix, Ariz., Pittsburgh, Pa., \*Portland, Oreg., Rochester, N. Y., Sacramento, Calif., St. Louis, Mo., \*Salt Lake City, Utah, \*San Francisco, Calif., \*Seattle, Wash., Tampa, Fla., \*Washington, D. C.

NOTE.—The above offices may be addressed as follows: Farm Products Inspection Service, United States Department of Agriculture.

(b) *Official sampling by licensees or other authorized persons.*—Samples may be officially drawn by individuals authorized, or licensed for the purpose by the Secretary as provided in section 52.31, who may ship samples to offices designated with asterisk (\*) under (a) of this section for grading.

## GRADING SERVICE

52.5 Who may obtain service.—An application for grading service under the act may be made by any person having a financial interest in the products involved, including Federal, State, county, or municipal governments, and canners, receivers, common carriers, or by any authorized person in behalf of such applicant.

52.6 Where application is filed.—Application for grading may be filed with an official grader or licensed sampler, or in any office mentioned in section 52.4. Proof of the applicant's interest or of the authority of any person applying for grading in behalf of another may be required in the discretion of the official grader or may be transmitted through any licensed sampler or through the person drawing samples.

52.7 How to make application.—Such application shall be in English, and may be made in writing or orally, by telegraph, telephone, or otherwise. It may be made for one or more cars, lot or lots, sample or samples of canned fruits and vegetables, or may be a blanket application for grading of all designated cars, lots, or samples of canned fruits and vegetables within a given period, or

within a given warehouse, store, or other place. If made orally, the official grader may require that it be confirmed in writing or by telegraph, setting forth the facts required in section 52.8.

**52.8 Form of application.**—Each application for grading shall state (a) the name and post office address of the applicant, and of the person making the application, if acting as agent for another; (b) the name and post office address of the carrier, if known; (c) the kind and quality of canned fruits and vegetables involved; (d) the financial interest of the applicant therein; (e) the identification of the canned fruits or vegetables by (1) the declared grade, label, brand, code, or other marks and their meaning if known; (2) the car initials, car number, and name of common carrier, if possible; (3) name and location of warehouse, store, or other place where the canned fruits and vegetables are located; and (4) any other pertinent information; (f) the particular quality or condition concerning which inspection or grading is requested, including the time when the service is desired and where the products to be examined are located; (g) the name and address of the buyer when the canned fruits and vegetables are to be graded in the receiving market; (h) the name of the originating points and the destination, when known; and (i) such other information as may be required by the Agricultural Marketing Service.

**52.9 When application is deemed filed.**—An application shall be deemed filed when delivered to the proper grading office. A record showing the date and time of filing shall be made in such office.

**52.10 When application may be rejected.**—Any application may be rejected by the official grader in charge of the office in which it is filed, for any noncompliance with the act or any applicable regulation thereunder, and such grader shall immediately notify the applicant by telegraph at the applicant's expense or in writing of the reasons for such rejection.

**52.11 When application may be withdrawn.**—Application may be withdrawn by the applicant at any time before the service is performed, upon payment of any expenses incurred in connection therewith.

**52.12 Accessibility of product.**—The applicant shall cause the canned fruits and vegetables for which grading is requested to be made accessible for sampling.

**52.13 Basis of certification.**—Grading and certification for quality or condition shall, unless the applicant shall request otherwise, be based upon the official or tentative standards for grades of canned fruits and vegetables of the United States Department of Agriculture, or upon Federal specifications of the Federal Specifications Executive Committee, or upon the specifications of any State or foreign country, or shall be by description where official standards or specifications are lacking. Certificates may be restricted to a single factor, such as net or drained weights, condition of cans or cases, etc.

**52.14 Order of grading.**—As many lots will be sampled and graded by official samplers and graders as facilities permit, and, as far as practicable, in the order in which applications are received, except that applications for appeal gradings shall have precedence over all other applications.

**52.15 Financial interest of grader.**—No official grader shall grade any product in which he is directly or indirectly financially interested.

**52.16 Postponing grading.**—If, because of the possibility of latent defects not apparent immediately after packing, or for any reason, the grader feels he will be unable to determine accurately the true grade and condition of a product, he shall postpone examination of the product for such period as may, in his judgment, be reasonably necessary to enable him to determine its true quality or condition.

**52.17 Form of certificate.**—Certificates shall be issued on forms approved by the Chief of Agricultural Marketing Service, provided, that when application for grading is made by any branch of the Federal Government or by a public institution or by anyone, for the purpose of determining whether canned fruits and vegetables for use by such applicant comply with contract specifications therefor, a formal certificate need not be issued, but the fact of such compliance or noncompliance with specification may be indicated by appropriate stamp or mark on such products or the containers thereof, or otherwise, as the official grader may deem proper: *Provided further*, That memoranda of gradings for other purposes may be issued in lieu of certificates on forms approved by the Chief of Agricultural Marketing Service.

**52.18 Issuance of certificates.**—The official grader shall sign and issue a separate certificate for each lot of canned fruits and vegetables graded by him. Each kind of canned fruits and vegetables shall constitute a separate lot, and

different types or styles of the same kind of canned fruits and vegetables shall be considered separate lots.

**52.19 Disposition of certificates.**—The original certificate and not to exceed four copies, if requested prior to issuance, shall be immediately delivered or mailed to the applicant or a person designated by him. One copy shall be filed in the office of the grader, and one copy forwarded to the Chief of Agricultural Marketing Service. Copies will be furnished to other financially interested parties as outlined in section 52.60.

**52.20 Advance information.**—Upon request of an applicant, all or any part of the contents of a certificate may be telegraphed or telephoned to him or to any person designated by him, at his expense.

### APPEAL GRADING

**52.21 When appeal may be taken.**—An application for appeal grading may be made when any party financially interested in a lot of canned fruit or vegetables previously officially sampled and graded is dissatisfied with the determination stated in the original certificate.

**52.22 How to obtain.**—Appeal gradings may be obtained by the applicant or other person financially interested in the lot by filing a request for such appeal grading (a) in the grading office nearest the point where the product is located, (b) with the grader who made the original grading, or (c) with the Chief of Agricultural Marketing Service. The application for appeal shall be filed within 30 days, exclusive of Sundays and legal holidays, from the date of the original certificate of grade and shall state the reasons therefor and may be accompanied by a copy of any previous certificate of grade or grading report, or any other information which the applicant shall have received regarding the grade or condition of the product at the time of the original grading. Such application may be made in writing or orally, by telegraph, telephone, or otherwise. If made orally, the person receiving the application may require that it be confirmed in writing.

**52.23 Record of filing time.**—A record showing the date and time of filing such application shall be immediately made by the receiver thereof.

**52.24 When appeal may be refused.**—If it shall appear that the reasons stated in an application for appeal grading are frivolous or unsubstantial, or that the quality or condition of the product has undergone a material change since the original grading, or that the product cannot be made accessible for a thorough examination of all parts of the lot, or the identity of the lot originally graded has been lost, or these regulations have not been complied with, the application may be denied.

**52.25 When appeal may be withdrawn.**—Any application for appeal grading may be withdrawn by the applicant at any time before the grading has been made, upon payment of any expenses incurred in connection therewith.

**52.26 When a second grading is not an appeal.**—When grading is requested to determine factors of quality or condition which may have undergone material change since the original grading; or when another grading is requested for the purpose of securing an up-to-date certificate and the applicant does not question the correctness of the original certificate covering the lot in question; or, when the samples used in connection with the first grading were not officially drawn, the new grading shall not be considered an appeal grading, within the meaning of sections 52.21-52.30.

**52.27 Order in which made.**—Appeal gradings shall as far as practicable be made at time requested by applicant and in the order in which applications are received.

**52.28 Who shall pass upon appeals.**—Appeal gradings shall be made by graders specially designated therefor by the Chief of Agricultural Marketing Service and such gradings shall be conducted jointly by two graders when practicable, neither of whom shall have graded the lot previously.

**52.29 Appeal findings.**—After an appeal grading has been made, a certificate designated as "appeal grade certificate" shall be signed and issued, referring specifically to the original certificate and stating the quality or condition of the product, as shown by the appeal grading. In all other respects the provisions of sections 52.5-52.20 shall apply to such appeal grade certificate, except that if the applicant for appeal grading be not the original applicant, a copy of the appeal grade certificate shall be mailed to the original applicant.

**52.30 Superseded certificates.**—When a certificate of grade shall have been superseded under these regulations by an appeal grade certificate, such certifi-

cate of grade shall become null and void and shall not thereafter represent the class, quality, or condition of the product described therein. If the original and all copies of the superseded certificate are not delivered to the person with whom the application for appeal grading is filed, the officer issuing the appeal grade certificate shall forward notice of such issuance and of the cancellation of the original certificate to such persons as he considers necessary to prevent fraudulent use of the cancelled certificate.

### LICENSED SAMPLERS

**52.31 Who may be licensed.**—Persons showing proper qualifications may be licensed by the Secretary as samplers of canned fruits and vegetables to be graded under the act, when so to do will expedite grading, or will effect savings to interested parties. All such licenses shall be countersigned by the division or project leader in charge of the canned fruit and vegetable grading service, by the supervising grader under whose direction the licensee is to draw samples, or by such other official as may be designated by the Chief of Agricultural Marketing Service.

**52.32 How applications are filed.**—Application for licenses to sample canned fruits and vegetables under the act shall be made to the Chief of Agricultural Marketing Service on forms furnished for the purpose by him.

**52.33 Form of application.**—Each such application shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (a) satisfactory evidence that he has passed his twenty-first birthday; (b) a statement indicating his present occupation; (c) a statement showing his occupation for 10 years prior to date of application, together with names of employers; (d) a statement that he will not in his official capacity as a licensed sampler, if licensed, draw samples from any lot of canned fruits and vegetables in which he or his employer are in any way financially interested; (e) a statement by the applicant that he agrees to comply with the terms of the act, and rules and regulations thereunder so far as they may relate to him; (f) a statement indicating the fees he will charge, if licensed, which shall not exceed \$1 for a single sample of 24 cans, \$1.50 for two such samples drawn at one time, and 50 cents for each additional sample drawn at any one time, plus actual traveling and subsistence expenses incurred incident thereto, if any; and (g) such other information as the Chief of Agricultural Marketing Service may require.

**52.34 Sampler's license may be suspended.**—A sampler's license may be suspended, pending final action by the Secretary of Agriculture, by any official by whom it may be countersigned or any superior officer whenever such official shall deem such action to be for the good of the service. Within 7 days after any such suspension, the licensee may file an appeal in writing to the Secretary of Agriculture, supported by any argument or evidence that he may wish to offer in his behalf.

**52.35 When samples to be drawn.**—Each licensed sampler when requested, shall without discrimination, as soon as practicable and upon reasonable terms, draw samples from such lots of canned fruits or vegetables as are in condition to permit adequate and proper sampling in the manner prescribed in section 52.45.

**52.36 Issuance of certificates of sampling.**—Immediately after samples are drawn, licensed samplers shall issue a certificate of sampling in quadruplicate on forms provided for the purpose by the Agricultural Marketing Service, the original and two copies to be shipped in the container with the samples to the grading office, the other copy to be retained by the sampler.

**52.37 Samples to be identified and sealed.**—After drawing samples, the licensed sampler shall issue an official sample label in duplicate, on label forms furnished by the Agricultural Marketing Service. These forms shall be affixed to two of the containers in the official sample for identification purposes. Except as provided in section 52.40, all of the containers in an official sample shall be packed in a fiberboard carton, the ends and flaps glued or tied down, and the "seam" created by the closing of the flaps, shall be completely covered by a strip of adhesive tape at least 2 inches wide, on which the licensed sampler shall place his initials and the certificate of sampling number on both the top and bottom of the fiberboard carton.

**52.38 Where samples are to be shipped.**—Samples drawn by licensed samplers shall be forwarded, after having been sealed as provided in section 52.37, to

the nearest official grading office of the Agricultural Marketing Service, or to such grading office as may be designated by the Agricultural Marketing Service, at the prepaid expense of the applicant.

52.39 **Retention of check samples.**—Upon receipt of an officially drawn sample at the office of the grader, in the absence of specific instructions from the Agricultural Marketing Service directing otherwise, the sample shall be divided, one-half to be used for grading and the remainder retained as a check sample at the grading office or at such points as the Agricultural Marketing Service may approve. The check sample will be held until the applicant indicates that sale of the lot from which it was drawn has been completed and that there is no further use for it, but will not be held for a period exceeding 1 year from date of grading. Upon request of applicant, the check or comparison sample or samples will be returned to the applicant, at his expense; otherwise, the samples will be disposed of in such manner as the Chief of Agricultural Marketing Service may direct.

52.40 **Retention of check samples stored with applicant.**—If the applicant requests, the official sample may be divided in two equal parts at time of sampling, one part being retained at point of sampling, as provided in section 52.41. In the event the official sample consists of containers bearing more than one code or identification mark or symbol, the samples shall be so divided and segregated that an equal number of containers of each code or symbol mark are shipped to the grading office and an equal number retained in the check sample.

52.41 **Sealing of check samples.**—When check samples are retained in the custody of the applicant, they shall be placed in a fiberboard carton and all seams completely sealed with adhesive tape not less than 2 inches wide. On the adhesive tape on both the bottom and top of the carton shall be placed the certificate of sampling or certificate of grade number, the date sampled, and the initials of the party performing the sampling.

52.42 **Invalidation of check samples.**—No check sample retained by the applicant shall be used as a basis for an appeal grading if the seal on the carton in which samples were packed is broken or shows evidence of tampering.

52.43 **Retention of check samples not officially drawn.**—Samples not officially drawn may be divided and retained in the manner outlined in sections 52.39 and 52.40 upon request of applicant, or if the official grader deems such procedure desirable.

### OFFICIAL SAMPLING

52.44 **How samples are drawn.**—Each employee of the Department, designated for the purpose, or licensed sampler, shall draw cans at random from different locations in each lot sampled, so that he may secure a true representative sample of the lot. If cans in the lot bear differing code symbols, care shall be taken to draw samples in the correct proportion for each similarly coded portion of the lot.

52.45 **Number of samples to be drawn.**—In the absence of specific instructions from the Agricultural Marketing Service directing otherwise, each licensed sampler or employee of the Department authorized to sample canned fruits and vegetables for the purpose of these regulations shall draw samples at the rate of 1 can for each 1,000 cans in a lot of can sizes No. 3 ( $4\frac{7}{16}$  by  $4\frac{1}{16}$  inches) and smaller, and 1 can for each 600 cans of sizes larger than No. 3 ( $4\frac{7}{16}$  by  $4\frac{1}{16}$  inches), but not larger than size No. 12 ( $6\frac{3}{16}$  by  $8\frac{1}{16}$  inches).

52.46 **Additional samples.**—If, in the opinion of the sampler, conditions warrant the drawing of a larger number of cans as a sample, such additional cans may be drawn as the official grader or licensed sampler may deem necessary.

### GRADING FEES AND EXPENSES

52.47 **How fees are to be paid.**—For each lot of canned fruits or vegetables graded, except for branches of the Federal government, a fee shall be paid by the applicant, and in advance if required by the official grader. Fees covered by sections 52.47-52.64, shall be remitted to the office of the Agricultural Marketing Service performing the service.

52.48 **Fee when samples are drawn by salaried employees of the Department.**—For each lot of canned fruits or vegetables graded consisting of 600 cases or less, the samples having been drawn by a salaried grader of the United States Department of Agriculture, a fee of \$3 shall be collected. For lots in

excess of 600 cases, fees shall be collected at the rate of \$1 for each 200 cases, or fraction thereof.

**52.49 Fee when samples are drawn by licensed samplers or Federal-State inspectors.**—For each lot of canned fruits and vegetables graded, the samples having been drawn by a licensed sampler or Federal-State inspector, the fee collected for grading shall be 60 percent of the rate prescribed in section 52.48. Fees for sampling assessed by licensed samplers or Federal-State inspectors shall be paid, in addition to the grading fee, by the applicant, in such manner as the Agricultural Marketing Service may direct.

**52.50 Fees for grading large lots.**—When large lots are graded for one applicant, as, for example, the canner's entire pack or a large portion thereof and which may consist of many lots of varying sizes, the amount of the fee collected shall be based on the total number of cases graded, using the rate provided in sections 52.48 and 52.49, whichever is applicable. For the purpose of interpreting this section, large lots shall consist of 20,000 cases or more.

**52.51 Fees when samples are not officially drawn.**—When samples which have not been officially drawn are submitted to a grading office, fees charged shall be as follows:

Number of cans	No. 3 size can (or smaller)	Cans larger than No. 3 size	Number of cans	No. 3 size can (or smaller)	Cans larger than No. 3 size
1 can	\$0.35	\$0.65	8 cans	\$2.00	\$4.20
2 cans	.70	1.30	9 cans	2.25	4.80
3 cans	1.00	1.90	10 cans	2.50	5.40
4 cans	1.30	2.50	11 cans	2.75	6.00
5 cans	1.50	3.00	12 cans	3.00	6.00
6 cans	1.50	3.00	For each additional can in the sample, per can	.25	.50
7 cans	1.75	3.60			

**52.52 Informal reports.**—When the fees assessed for grading of samples of one lot amount to \$1 or less, an informal report will be issued, except as provided in section 52.53.

**52.53 Minimum fee for gradings reported on formal certificates.**—Upon request of applicant, formal certificates will be issued, but a minimum fee for gradings reported on formal certificates of \$1 shall be collected.

**52.54 Fees for grading commodities requiring microscopical analysis.**—If the commodity graded is one the grade for which requires microscopical analysis for mold, or in which microscopical analysis for worm fragments is desirable, an additional charge shall be made of \$1 for each type of microscopical analysis of each container in the sample, unless the applicant requests the omission of the analysis, in which event the certificate of grade shall be qualified and indicate "at request of applicant microscopical analysis not made." If the applicant requests that microscopical analysis be made of a composite sample of all containers in a sample, a charge of \$1 for each type of microscopical analysis shall be made and the certificate of grade shall indicate "microscopical analysis was made of a composite sample."

**52.55 Fee for making alcohol-insoluble-solids determination.**—If the commodity graded is one on which alcohol-insoluble-solids determinations are sometimes desirable, an additional charge of \$2 shall be made for each determination made. Certificates of grade shall clearly indicate whether the determination was made on each can or on a composite sample.

**52.56 Fees for other examinations.**—Fees for examinations of a character not covered in the preceding sections shall be charged on a basis approved by the Agricultural Marketing Service.

**52.57 Refunds when declaration of intention is signed by applicant.**—Any applicant who signs a declaration of intention indicating that he intends to use the grading service to the extent of 50 or more gradings at any one office of official grading within the period of 1 year immediately following the filing of the declaration of intention, and who pays for 50 or more gradings, will receive a refund at the end of the year period.

*(a) Contract basis for 50 to 999 gradings in 12 months.*—Any applicant who shall have paid for 50 or more gradings at any one office of official grading or office operating temporarily in its territory, in accordance with sections 52.48 or 52.49, within the period of 1 year immediately following the filing of a declaration of his intention to avail himself of this privilege shall receive a

refund from the Department at the rate of 25 percent of the total amount of fees paid, at the end of the year period, subject to the provisions under (c) of this section.

(b) *Contract basis for 1,000 or more gradings in 12 months.*—Any applicant who shall have paid for 1,000 or more gradings at any one office of official grading or office operating temporarily in its territory, in accordance with sections 52.48 or 52.49, within the period of 1 year immediately following the filing of a declaration of his intention to avail himself of this privilege shall receive a refund from the Department at the rate of 33½ percent of the total amount of fees paid, at the end of the year period, subject to the provisions under (c) of this section.

(c) *How refunds are to be computed.*—For the purpose of computing the refunds provided under (a) and (b) of this section, \$5 collected in fees shall be considered a grading when the samples have been drawn by an official of the Department, regardless of the number of certificates issued, and \$3 collected in fees shall be considered a grading if the samples have been drawn by someone other than an official of the Department. Charges or fees assessed for microscopic analysis, alcohol-insoluble solids determinations, or service for which additional fees are assessed, as indicated under section 52.56, copies of score sheets, copies of certificates, travel or incidental expenses, fees based on the hourly rate, or charges for continuous factory inspection are not subject to refund.

(d) *Payment of refunds.*—In the absence of specific request from the applicant for earlier payment, the refunds provided under (a) and (b) of this section shall be made at the end of the 12-month period.

52.58 **Charges for traveling expenses.**—Such charges may be made for traveling expenses and other items paid or incurred by the Agricultural Marketing Service in connection with grading or sampling, at points other than those named in section 52.4, or appeal grading where the services of an appeal grader are required, as will reimburse the Department.

52.59 **Fees for score sheet when formal certificates are issued.**—If the applicant, when application is filed, requests a score sheet showing in detail the grading of each container graded, such score sheet covering the grading of 12 cans or less in 1 lot shall be furnished, for which an additional fee of 50 cents per sheet will be assessed.

52.60 **Fees for copies of certificates.**—A fee of \$1 shall be assessed for not to exceed three copies of certificate furnished to persons having a financial interest in the canned fruits and vegetables involved, in addition to those mentioned in section 52.19.

52.61 **Fees for appeal gradings.**—Fees for appeal gradings shall be double those for original gradings, except that when it is found that there was a material error in the determination based upon the original grading, no fee will be charged for the appeal grading.

52.62 **When score sheets are attached to informal reports.**—When informal reports are issued, if, previous to grading, the applicant so requests, the score sheet may be attached to the informal report in lieu of carrying detailed information on the report and no charge will be made for the score sheet.

52.63 **When charges are to be based on hourly rate.**—When grading is done and formal certificates are not issued or when the services rendered are such that charges based upon the foregoing sections would be inadequate or inequitable, charges may be based on the time consumed by the official grader at the rate of \$2.60 per hour.

52.64 **Fee for continuous factory inspection and grading.**—Charges for continuous factory inspection and grading may be made on such contract basis as will reimburse the Agricultural Marketing Service for the salary and all expenses of the factory inspector, and fees of official grader, to which shall be added an appropriate percentage of charges assessed to cover, as nearly as practicable, administrative overhead expenses.

## MISCELLANEOUS

52.65 **Fraud or misrepresentation.**—Any willful misrepresentation, or any deceptive or fraudulent practice made or committed by any applicant for grading, appeal grading, or regrading, including the submission of improperly drawn or false samples drawn with intent to deceive, or the improper use of the grade certification on labels or invoices may be deemed sufficient cause for declining further applications for grading service from the person guilty thereof.

52.66 Political activity.—All graders authorized to issue certificates of grade under the act and these regulations are forbidden, during the period of their appointment to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including temporary employees, and employees on leave of absence with or without pay. Willful violation of sections 52.65 and 52.66 will constitute grounds for dismissal.

52.67 Publication.—Publication under the act and these regulations shall be made in such media as the Agricultural Marketing Service may from time to time designate for the purpose.

52.68 Identification.—All graders shall have in their possession at all times Agricultural Marketing Service identification cards, and shall identify themselves by such cards on request.

Done at Washington, D. C., this 25th day of August 1939.  
Witness my hand and the seal of the Department of Agriculture.



*Harry L. Brown*

*Acting Secretary of Agriculture.*







